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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEP 03 2020

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

11 Plaintiff,

2:20-CR-0022-TOR

12 vs.

PLEA AGREEMENT PURSUANT
TO FED. R. CRIM. P. 11(C)(1)(C)

13 JAMES MATTHEW ETHRINGTON,

15 Defendant.

16
17 Plaintiff United States of America, by and through William D. Hyslop, United
18 States Attorney for the Eastern District of Washington, and Caitlin Baunsgard,
19 Assistant United States Attorney for the Eastern District of Washington, and
20 Defendant, JAMES MATTHEW ETHRINGTON, and the Defendant's counsel,
21 Zachary Ayers, agree to the following Plea Agreement:

22 1. Guilty Plea and Maximum Statutory Penalties:

23 The Defendant, JAMES MATTHEW ETHRINGTON, agrees to enter a plea of
24 guilty, pursuant to Fed. R. Crim. P. 11(c)(1)(C), to Count 1 of the Indictment filed on
25 February 19, 2020 , charging the Defendant with Possession with Intent to Distribute
26 50 Grams or More of Actual (Pure) Methamphetamine, in violation of 21 U.S.C.
27 § 841(a)(1), (b)(1)(A)(viii).
28

1 The Defendant understands that this charge is a Class A felony charge and also
2 understands that the maximum statutory penalty for this offense is not less than 10
3 years nor more than a life term of incarceration; a fine not to exceed \$10,000,000; a
4 term of supervised release of not less than 5 years up to a life term; denial of certain
5 federal benefits; and a \$100 special penalty assessment.

6 The Defendant understands that a violation of a condition of supervised release
7 carries an additional penalty of re-imprisonment for all or part of the term of
8 supervised release, pursuant to 18 U.S.C. § 3583(e)(3), without credit for time
9 previously served on post-release supervision.

10 2. Global Resolution:

11 The Defendant is currently charged by the State of Washington, in and for the
12 County of Spokane, with multiple offenses under the following Spokane County
13 Superior Court Cause Numbers: 17-1-04973-6; 18-1-02801-0; 19-1-02214-1; 19-1-
14 02656-2; and 19-1-10788-1. The Defendant affirmatively wishes to resolve all of
15 these federal and state charges as part of a single, global resolution¹. This agreement
16 does not contemplate the resolution of any charges in any other jurisdiction.

17 After the Defendant enters his plea to the federal charge pending against him in
18 the Eastern District of Washington on or about September 3, 2020, the Defendant
19 understands the State of Washington will obtain a Writ to have him transferred to state
20 custody and transported to the Spokane County Courthouse to allow him to enter pleas
21 of guilty under his agreement with the State of Washington. After the Defendant
22 enters his pleas in state court, he will either proceed to sentencing in state court or be
23 returned to the federal custody of the United States Marshal's Service.

24
25
26 ¹ The United States is not seeking to include these events as relevant conduct under
27 USSG §1B1.3. However, the United States is free to discuss and argue this event as
28 conduct to be considered by the sentencing court under the 18 U.S.C. § 3553(a)
sentencing factors.

1 The Defendant understands he will then remain in federal custody until he is
2 sentenced in federal court on his plea of guilty to the federal charge contemplated
3 herein in the Eastern District of Washington. If the Defendant has not yet been
4 sentenced in state court after the Defendant is sentenced on the federal charge, the
5 Defendant understands the State of Washington will then again obtain a Writ to have
6 him transferred into state custody to be sentenced on the state charge. After the
7 Defendant is sentenced on the state charge, he will be returned to federal custody to
8 serve his federal sentence, before he serves any state sentence, which the parties
9 expect to run concurrently to the federal sentence.

10 In order to effectuate the entry of pleas in this case, and to ensure that the
11 Defendant serves the majority of the sentence imposed in a federal facility, the
12 Defendant agrees to execute a waiver of any Interstate Agreement on Detainers Act
13 Anti-Shuttling rights he may have, before entry of his guilty plea to the federal charge.
14 The Defendant is not waiving any such rights he may have with respect to cases in any
15 other jurisdiction(s).

16 If the Defendant does not resolve the state charges referenced herein as agreed
17 in state court, then the Defendant shall be in material breach of this Plea Agreement
18 and the United States, at its sole discretion, may withdraw from the Plea Agreement.

19 3. Denial of Federal Benefits:

20 The Defendant understands that by entering this plea of guilty the Defendant is
21 no longer eligible for assistance under any state program funded under part A of title
22 IV of the Social Security Act (concerning Temporary Assistance for Needy Families)
23 or benefits under the food stamp program or any state program carried out under the
24 Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may deny the Defendant's
25 eligibility to any grant, contract, loan, professional license, or commercial license
26 provided by an agency of the United States or by appropriated funds of the United
27 States. 21 U.S.C. § 862.
28

1 4. The Court is Not a Party to the Plea Agreement:

2 The Court is not a party to this Plea Agreement and may accept or reject this
3 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
4 Court. The Defendant understands that the Court is under no obligation to accept any
5 recommendations made by the United States and/or by the Defendant; that the Court
6 will obtain an independent report and sentencing recommendation from the U.S.
7 Probation Office; and that the Court may, in its discretion, impose any sentence it
8 deems appropriate up to the statutory maximums stated in this Plea Agreement.

9 The Defendant acknowledges that no promises of any type have been made to
10 the Defendant with respect to the sentence the Court will impose in this matter. The
11 Defendant understands that the Court is required to consider the applicable sentencing
12 guideline range, but may depart upward or downward in the exercise of its discretion
13 pursuant to United States v. Booker, 543 U.S. 220 (2005).

14 The Defendant understands that should the sentencing judge decide to sentence
15 the Defendant to more than 235 months of incarceration, the Defendant may withdraw
16 from this Plea Agreement and may withdraw his guilty plea. The Defendant also
17 understands that should the sentencing judge decide to sentence the Defendant to less
18 than 180 months, the United States may withdraw from this Plea Agreement.

19 5. Waiver of Constitutional Rights:

20 The Defendant, JAMES MATTHEW EHTRINGTON, understands that by
21 entering these pleas of guilty the Defendant is knowingly and voluntarily waiving
22 certain constitutional rights, including:

- 23 (a). The right to a jury trial;
24 (b). The right to see, hear and question the witnesses;
25 (c). The right to remain silent at trial;
26 (d). The right to testify at trial; and
27 (e). The right to compel witnesses to testify.
28

1 While the Defendant is waiving certain constitutional rights, the Defendant
2 understands the Defendant retains the right to be assisted through the sentencing and
3 any direct appeal of the conviction and sentence by an attorney, who will be appointed
4 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also
5 acknowledges that any pretrial motions currently pending before the Court are waived.

6 6. Elements of the Offense:

7 The United States and the Defendant agree that in order to convict the
8 Defendant of Possession with Intent to Distribute 50 Grams or More Actual (Pure)
9 Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), the United
10 States would have to prove beyond a reasonable doubt the following elements:

11 *First*, on or about August 27, 2019, in the Eastern District of
12 Washington and elsewhere, the Defendant, JAMES MATTHEW
13 ETHRINGTON, knowingly and intentionally possessed a mixture
14 or substance containing a detectable amount of methamphetamine;
15 *Second*, the Defendant possessed the mixture or substance containing
16 methamphetamine with the intent to distribute it to another person; and
17 *Third*, the mixture or substance contained 50 grams or more of actual
18 (pure) methamphetamine.

19 7. Statement of Facts:

20 The United States and the Defendant stipulate and agree that the United States
21 could prove these facts beyond a reasonable doubt at trial; these facts are accurate; and
22 these facts constitute an adequate factual basis for JAMES MATTHEW
23 ETHRINGTON's guilty plea. This statement of facts does not preclude either party
24 from presenting and arguing, for sentencing purposes, additional facts which are
25 relevant to the guideline computation or sentencing, unless otherwise prohibited in
26 this Plea Agreement. The parties further agree and stipulate that this factual basis is
27 simply a summary to support the plea, it does not contain all facts which could be
28 proven by the United States.

1 On or about August 27, 2019, officers with the Spokane Police Department
2 observed suspicious activity related to a potentially stolen vehicle. Two vehicles
3 appeared associated with the incident. Corporal Daniel followed one of the vehicles, a
4 GMC Yukon, as it left the location. Officer Rodriguez also followed the vehicle and
5 observed the driver of the vehicle, later identified as the Defendant, JAMES
6 MATTHEW ETHRINGTON, look in his mirrors and notice Corporal Daniel's
7 vehicle. Corporal Daniel initiated a traffic stop by activating his emergency overhead
8 lights. The Defendant repeatedly looked in his rear view mirror and traveled several
9 additional blocks before eventually pulling over, despite multiple safe locations for
10 him to pull over during that time. During those additional blocks of travel, Officer
11 Rodriguez observed the Defendant moving in the vehicle, making furtive-type
12 movements, and ducking out of view for a period of time.

13 The driver verbally identified himself as the Defendant and stated that his
14 driving status was suspended. A check with Washington State Department of
15 Licensing confirmed this status. During the contact, Officer Rodriguez observed
16 common drug-use paraphernalia in the driver's area of the vehicle. The Defendant
17 was arrested. A search of his person revealed approximately \$790.00 in U.S.
18 Currency.

19 A search warrant was obtained for the vehicle. In the vehicle were documents
20 with the Defendant's name, and a "hot/cold" type bag on the floorboard behind the
21 driver's side seat. In that bag, the DEA Laboratory has confirmed was approximately
22 2,245.9 grams of actual (pure) methamphetamine. Next to where the "hot/cold" type
23 bag was located was a shoebox, which contained approximately 480.8 grams of heroin
24 (per the DEA Laboratory), a cup with heroin residue, two digital scales, and empty
25 plastic bags with heroin residue in them. In the center console of the vehicle was
26 approximately \$9,163 in U.S. Currency as well as counterfeit currency. The Spokane
27 County Sheriff's Office Forensic Unit examined the packaging containing the
28

1 methamphetamine and located the Defendant's fingerprint on one of the packages
2 containing methamphetamine.

3 8. The United States Agrees

4 (a). *Not to File New Charges:*

5 The United States Attorney's Office for the Eastern District of Washington
6 agrees not to bring any additional charges against the Defendant based upon
7 information in its possession at the time of this Plea Agreement and arising out of
8 Defendant's conduct involving illegal activity charged in this Indictment, unless the
9 Defendant breaches this Plea Agreement.

10 (b). *Dismissal of Count 2:*

11 At sentencing, the United States will move the Court to dismiss Count 2 of the
12 Indictment charging the Defendant with Possession with Intent to Distribute 50 Grams
13 or More of Actual (Pure) Methamphetamine, in violation of 21 U.S.C. § 841(a)(1),
14 (b)(1)(A)(viii).

15 9. United States Sentencing Guideline Calculations:

16 The Defendant understands and acknowledges that the United States Sentencing
17 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
18 determine the Defendant's applicable sentencing guideline range at the time of
19 sentencing. The Defendant also understands that pursuant to United States v. Booker,
20 543 U.S. 220 (2005), the Court is required to consider the factors set forth in 18
21 U.S.C. § 3553(a), and to impose a reasonable sentence.

22 (a). *Base Offense Level and Relevant Conduct:*

23 The United States and the Defendant stipulate and agree to recommend to the
24 Court the Base Offense Level is 36 as the Defendant possessed at least 30,000
25 kilograms but less than 90,000 kilograms of converted drug weight². See USSG
26 §2D1.1(a)(5), (c)(2); USSG §1B1.3(a).

27 ² The parties are recommending the use of the drug conversion table per U.S.S.G.
28 §2D1.1 cmt. 8.

1 (b). *Specific Offense Characteristics:*

2 The United States and the Defendant to recommend that no special offense
3 characteristics apply. *See generally* USSG §2D1.1(b).

4 (c). *Role Adjustments:*

5 The United States and the Defendant agree to recommend no role adjustment
6 applies. *See* USSG §3B1.1; §3B1.2.

7 (d). *Acceptance of Responsibility:*

8 If the Defendant pleads guilty and demonstrates a recognition and an
9 affirmative acceptance of personal responsibility for the criminal conduct; provides
10 complete and accurate information during the sentencing process; does not commit
11 any obstructive conduct; accepts this Agreement; and enters a plea of guilty no later
12 than the next Pre-Trial Conference date; the United States will move for a three
13 (3)-level downward adjustment in the offense level for the Defendant's timely
14 acceptance of responsibility, pursuant to USSG §3E1.1(a) and (b).

15 The Defendant and the United States agree that the United States may at its
16 option and upon written notice to the Defendant, not recommend a three (3)-level
17 reduction for acceptance of responsibility if, prior to the imposition of sentence, the
18 Defendant is charged or convicted of any criminal offense whatsoever, other than any
19 new criminal offenses brought by the State of California, or if the Defendant tests
20 positive for any controlled substance.

21 (e). *Criminal History:*

22 The United States and the Defendant have made no agreement and make no
23 representations as to the Defendant's Criminal History Category, which shall be
24 determined by the Court at sentencing after the Presentence Investigation Report is
25 completed.

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10. Length of Incarceration:

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Court may impose a term of incarceration within the range of 180 months and 235 months, to be run concurrent to any term of incarceration that may be imposed in the State of Washington cases contemplated in this global resolution (Paragraph 2, *supra*). The United States will recommend a term of incarceration of 235 months and the Defendant will recommend a term of incarceration of 180 months.

11. Criminal Fine:

The United States and the Defendant agree to recommend the Court impose no criminal fine.

12. Supervised Release:

The United States and the Defendant agree to jointly recommend that the Court impose a five (5) year term of supervised release, to include the following special conditions, in addition to the standard conditions of supervised release:

(a). that the Defendant participate and complete such drug testing and drug treatment programs as the Probation Officer directs, but not to exceed six non-treatment drug tests per month during the imposed term of supervised release; and

(b). that the Defendant's person, residence, office, vehicle, and belongings are subject to search at the direction of the Probation Officer.

13. Mandatory Special Penalty Assessment:

The Defendant agrees to pay the \$100 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to 18 U.S.C. § 3013, and shall provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

14. Payments While Incarcerated:

If the Defendant lacks the financial resources to pay the monetary obligations imposed by the Court, the Defendant agrees to earn the money to pay toward these

1 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
2 Program if the Court sentences the Defendant to a term of incarceration.

3
4 15. Additional Violations of Law Can Void Agreement:

5 The Defendant and the United States agree that the United States may at its
6 option and upon written notice to the Defendant, withdraw from this Plea Agreement
7 or modify its recommendation for sentence if, prior to the imposition of sentence, the
8 Defendant is charged or convicted of any criminal offense whatsoever, other than any
9 new criminal offenses brought by the State of California, or if the Defendant tests
10 positive for any controlled substance.

11 16. Waiver of Appeal and Collateral Attack Rights:

12 In return for the concessions that the United States has made in this Plea
13 Agreement, the Defendant agrees to waive his right to appeal the sentence if the Court
14 accepts this Plea Agreement.

15 The Defendant further expressly waives his right to file any post-conviction
16 motion attacking his conviction and sentencing, including a motion pursuant to 28
17 U.S.C. § 2255, except one based upon ineffective assistance of counsel based on
18 information not known by the Defendant, and which, in the exercise of due diligence,
19 could not be known by the Defendant by the time the Court imposes sentence.

20 Should the Defendant successfully move to withdraw from this Plea Agreement
21 or should the Defendant's conviction on Count 1 of the Indictment be dismissed, set
22 aside, vacated, or reversed, this Plea Agreement shall become null and void; the
23 United States may prosecute the Defendant on all available charges involving or
24 arising from his participation in drug trafficking. Nothing in this Plea Agreement
25 shall preclude the United States from opposing any post-conviction motion for a
26 reduction of sentence or other attack of the conviction or sentence, including, but not
27 limited to, proceedings pursuant to 28 U.S.C. § 2255.

28 17. Integration Clause:

1 The United States and the Defendant acknowledge that this document
2 constitutes the entire Plea Agreement between the United States and the Defendant,
3 and no other promises, agreements, or conditions exist between the United States and
4 the Defendant concerning the resolution of the case. This Plea Agreement is binding
5 only upon the United States Attorney's Office for the Eastern District of Washington,
6 and cannot bind other federal, state or local authorities. The United States and the
7 Defendant agree that this agreement cannot be modified except in a writing that is
8 signed by the United States and the Defendant.

9
10 Approvals and Signatures

11 Agreed and submitted on behalf of the United States Attorney's Office for the
12 Eastern District of Washington.

13
14 William D. Hyslop
15 United States Attorney

16 
17 Caitlin Baunsgard
18 Assistant U.S. Attorney

19
20
21 
22 Date

23 I have read this Plea Agreement and have carefully reviewed and discussed
24 every part of the agreement with my attorney. I understand and voluntarily enter into
25 this. Furthermore, I have consulted with my attorney about my rights, I understand
26 those rights, and I am satisfied with the representation of my attorney in this case. No
27 other promises or inducements have been made to me, other than those contained in
28 this Plea Agreement, and no one has threatened or forced me in any way to enter into
this Plea Agreement. I am agreeing to plead guilty because I am guilty.

1 JM
2 JAMES MATTHEW ETHRINGTON
3 Defendant
4

9/3/2020
Date

5 I have read the Plea Agreement and have discussed the contents of the Plea
6 Agreement with the Defendant. The Plea Agreement accurately and completely sets
7 forth the entirety of the agreement between the parties. I concur in Defendant's
8 decision to plead guilty as set forth in the Plea Agreement. There is no legal reason
9 why the Court should not accept the Defendant's plea of guilty.
10

11 Zachary L. Ayers
12 Zachary Ayers
13 Attorney for the Defendant
14

9/3/2020
Date